

Background Regarding the Local Boundary Commission and Biographies of Current Members

A. Background on the Local Boundary Commission

1. Constitutional Origin of the LBC

The framers of Alaska's constitution subscribed to the principle that, "unless a grave need existed, no agency, department, commission, or other body should be specified in the constitution." (Victor Fischer, *Alaska's Constitutional Convention*, p. 124.) The framers recognized that a "grave need" existed when it came to the establishment and alteration of municipal governments by providing for the creation of the LBC in Article X, Section 12 of the Constitution.¹

The LBC is one of only five State boards or commissions established in the constitution (among a current total of approximately 120 active boards and commissions).² The Alaska Supreme Court characterized the framers' purpose in creating the LBC as follows:

An examination of the relevant minutes of [the Local Government Committee of the Constitutional Convention] shows clearly the concept that was in mind when the local boundary commission section was being considered: that local political decisions do not usually create proper boundaries and that boundaries should be established at the state level. The advantage of the method proposed, in the words of the committee:

. . . lies in placing the process at a level where area-wide or state-wide needs can be taken into account. By placing authority in this third party, arguments for and against boundary change can be analyzed objectively.

Fairview Public Utility District No. 1 v. City of Anchorage, 368 P.2d 540, 543 (Alaska 1962).

¹ Article X, Section 12 states, "A local boundary commission or board shall be established by law in the executive branch of state government. The commission or board may consider any proposed local government boundary change. It may present proposed changes to the Legislature during the first ten days of any regular session. The change shall become effective forty-five days after presentation or at the end of the session, whichever is earlier, unless disapproved by a resolution concurred in by a majority of the members of each house. The commission or board, subject to law, may establish procedures whereby boundaries may be adjusted by local action."

² The other four are the Commission on Judicial Conduct, the Judicial Council, the University of Alaska Board of Regents, and the (legislative) Redistricting Board.

2. Duties and Functions of the LBC

The LBC acts on proposals for seven different municipal boundary changes. These are:

- ✓ incorporation of municipalities;³
- ✓ reclassification of city governments;
- ✓ annexation to municipalities;
- ✓ dissolution of municipalities;
- ✓ detachment from municipalities;
- ✓ merger of municipalities; and
- ✓ consolidation of municipalities.

In addition to the above, the LBC has a continuing obligation under statutory law to:

- make studies of local government boundary problems;
- adopt regulations providing standards and procedures for municipal incorporation, annexation, detachment, merger, consolidation, reclassification, and dissolution; and
- make recommendations to the Legislature concerning boundary changes under Article X, Section 12 of Alaska's Constitution.

Further, the LBC is routinely assigned duties by the Legislature; e.g., the 2002 requirement to study the unorganized borough and determine which areas meet borough incorporation standards and the 2003 directive to work with the Department of Education and Early Development regarding school district consolidation.

3. LBC Decisions Must have a Reasonable Basis and Must be Arrived at Properly

LBC decisions regarding petitions that come before the Commission must have a reasonable basis. That is, both the LBC's interpretation of the applicable legal standards and its evaluation of the evidence in the proceeding must have a rational foundation.⁴

³ The term "municipalities" includes both city governments and borough governments.

⁴ See *Keane v. Local Boundary Commission*, 893 P.2d 1239, 1241 (Alaska 1995). When an administrative decision involves expertise regarding either complex subject matter or fundamental policy formulation, the court defers to the decision if it has a reasonable basis;

The LBC must, of course, proceed within its jurisdiction; conduct a fair hearing; and avoid any prejudicial abuse of discretion. Abuse of discretion occurs if the LBC has not proceeded in the manner required by law or if its decision is not supported by the evidence.

4. Communications with the LBC

When the LBC acts on a petition for a municipal boundary change, it does so in a quasi-judicial capacity. LBC proceedings regarding a municipal boundary change must be conducted in a manner that upholds the right of everyone to due process and equal protection.

Ensuring that communications with the LBC concerning municipal boundary proposals are conducted openly and publicly preserves rights to due process and equal protection. To regulate communications, the LBC adopted 3 AAC 110.500(b) which expressly prohibits private (ex parte) contact between the LBC and any individual, other than its staff, except during a public meeting called to address a municipal boundary proposal. The limitation takes effect upon the filing of a petition and remains in place through the last date available for the Commission to reconsider a decision. If a decision of the LBC is appealed to the court, the limitation on ex parte contact is extended throughout the appeal in the event the court requires additional consideration by the LBC.

In that regard, all communications with the Commission must be submitted through staff to the Commission. The LBC staff may be contacted at the following address, telephone number, facsimile number, or e-mail address.

**Local Boundary Commission Staff
550 West Seventh Avenue, Suite 1770
Anchorage, Alaska 99501-3510
telephone: (907) 269-4559
fax: (907) 269-4539
alternate fax: (907) 269-4563
e-mail: LBC@dced.state.ak.us**

Lake and Peninsula Borough v. Local Boundary Commission, 885 P.2d 1059, 1062 (Alaska 1994); *Mobil Oil Corp. v. Local Boundary Commission*, 518 P.2d 92, 97-8 (Alaska 1974). Where an agency action involves formulation of a fundamental policy the appropriate standard on review is whether the agency action has a reasonable basis; LBC exercises delegated legislative authority to reach basic policy decisions; acceptance of the incorporation petition should be affirmed if court perceives in the record a reasonable basis of support for the LBC's reading of the standards and its evaluation of the evidence; *Rose v. Commercial Fisheries Entry Comm'n*, 647 P.2d 154, 161 (Alaska 1982) (review of agency's exercise of its discretionary authority is made under the reasonable basis standard) cited in *Stosh's I/M v. Fairbanks North Star Borough*, 12 P.3d 1180, 1183 nn. 7 and 8 (Alaska 2000); see also *Matanuska-Susitna Borough v. Hammond*, 726 P.2d 166, 175-76 (Alaska 1986).

5. LBC Membership

The LBC is an independent, quasi-judicial commission. Members of the LBC are appointed by the Governor for five-year overlapping terms. (AS 44.33.810.) Notwithstanding their terms, members of the LBC serve at the pleasure of the Governor. (AS 39.05.060(d).)

The LBC is comprised of five members. One member is appointed from each of Alaska's four judicial districts. The fifth member is appointed from the state at-large.

State law provides that members of the LBC must be appointed "on the basis of interest in public affairs, good judgment, knowledge and ability in the field of action of the department for which appointed, and with a view to providing diversity of interest and points of view in the membership." (AS 39.05.060.)

LBC members receive no pay for their service on the Commission. However, they are entitled to the travel expenses and per diem authorized for members of boards and commissions under AS 39.20.180.

The following is a biographical summary of the current members of the LBC.

Darroll Hargraves, Chair, At-Large Appointment, Wasilla



Darroll Hargraves of Wasilla was appointed Chair of the LBC by Governor Murkowski in March 2003. Commissioner Hargraves holds a Masters degree and an Education Specialist degree from the University of Alaska, Fairbanks. Additionally, Oakland City University awarded him the Doctor of Humane Letters. Commissioner Hargraves has been School Superintendent in Nome, Ketchikan, and Tok. He was the Executive Director of the Alaska Council of School Administrators from 1998 to 2002. He is currently a management/ communications consultant working with school districts and nonprofit organizations. Commissioner

Hargraves previously served as Chair of the LBC from 1992-1997. His current term on the Commission expires January 31, 2008.

Georgianna Zimmerle, First Judicial District, Ketchikan



Georgianna Zimmerle serves from the First Judicial District. She is a resident of Ketchikan. Commissioner Zimmerle was appointed to the Commission on March 25, 2003. An Alaska Native, Commissioner Zimmerle is Tlingit and Haida. She is currently the General Manager for Ketchikan Indian Community. She worked for the Ketchikan Gateway Borough for 27 years, serving five years as the Borough Manager and 22 years in the Borough Clerk's Office. Her current term on the Commission expires January 31, 2006.

Robert Harcharek, Second Judicial District, Barrow



Robert Harcharek serves from the Second Judicial District. He was appointed to the LBC on July 18, 2002. Mr. Harcharek has lived and worked on the North Slope for more than 20 years. He has been a member of the Barrow City Council since 1993 and a member of the North Slope Borough School Board since 1999. He is a Senior Planner and Social Science Researcher for the North Slope Borough Planning Department. Mr. Harcharek earned a Ph.D in International and Development Education from the University of Pittsburgh in 1977. He has served as North Slope Borough Capital Improvement Projects and Economic Development Planner, Community Affairs Coordinator for the North Slope Borough Department of Public Safety, Director of the North Slope Higher Education Center, Socio-cultural Scientist for the North Slope Borough Department of Wildlife Management, Director of Technical Assistance for Upkeagvik Inupiat Corporation, and Dean of the Inupiat University of the Arctic. Mr. Harcharek served for two years as a Peace Corps Volunteer in Thailand and was also a Fulbright-Hays Professor of Multicultural Development in Thailand. He is a member of numerous boards of directors, including the Alaska Association of School Boards and the Alaska Municipal League Legislative Committee. His current term on the Commission expired January 31, 2004.

Robert Hicks, Vice-Chair, Third Judicial District, Seward



Robert Hicks of Seward was appointed to the LBC from the Third Judicial District by Governor Murkowski in March 2003. His fellow commissioners elected him as Vice-Chair of the LBC.

Commissioner Hicks is a graduate of Harvard Law School. From 1972 - 1975, he served as Executive Director of the Alaska Judicial Council. He practiced law in Alaska from 1975 - 2001.

One of the areas in which he specialized as an attorney was the field of local government, including the Local Boundary Commission. Since 2001, Commissioner Hicks has served as the Director of Corporate Affairs and the Dive Officer at the Alaska SeaLife Center in Seward. Commissioner Hicks' current term on the LBC expires January 31, 2007.

Dr. Anthony Nakazawa, Fourth Judicial District, Fairbanks



Anthony "Tony" Nakazawa serves from the Fourth Judicial District and is a resident of Fairbanks. He was appointed to the LBC on February 14, 2003. Commissioner Nakazawa is employed as the State Director of the Alaska Cooperative Extension Service, USDA/University of Alaska Fairbanks, which includes district offices in ten communities throughout Alaska. He previously served as the director of the Division of Community

and Rural Development for the Alaska Department of Community and Regional Affairs under Governor Walter J. Hickel. Commissioner Nakazawa, an extension economist and UAF professor, has been with the Cooperative Extension Service since 1981 and with the Hawaii Cooperative Extension system in 1979-1980. From 1977-1979, he served as the Economic Development Specialist for the Ketchikan Gateway Borough. His past activities include board service with the Alaska Rural Development Council, RurAL CAP, Alaska Job Training Council, and Asian-Alaskan Cultural Center. Commissioner Nakazawa received his B.A. in economics from the University of Hawaii Manoa in 1971, and his M.A. in urban economics from the University of California Santa Barbara in 1974. He received his M.S. (1976) and Ph.D. (1979) in agriculture and resource economics from the University of California Berkeley. His current term on the Commission expires December 21, 2004.